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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,794	05/28/2004	Gregory J. Mann	BUR920040055US1	3793
30449 7590 07/16/2007 SCHMEISER, OLSEN & WATTS 22 CENTURY HILL DRIVE SUITE 302 LATHAM, NY 12110			EXAMINER ALPHONSE, FRITZ	
			ART UNIT 2112	PAPER NUMBER
			MAIL DATE 07/16/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/709,794

**Applicant(s)**

MANN, GREGORY J.

**Examiner**

Fritz Alphonse

**Art Unit**

2112

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

0.1 This Office Action is in response to the amendment filed on 4/23/2007. Claims 1, 4, 6, 7, 11, 14, 17, 21, 26, 27, 29 are amended.

#### ***Claim Objections***

1. Claim 26 is objected to because of the following informalities: in line 7, replace “into a data partition of” by---into a data partition--- . Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 26-30 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a credible asserted utility or a well established utility.

Independent claim 26 defines “a method of designing a circuit, the method comprising:  
(a) distributing a current cyclic redundancy check (CRC) remainder XOR calculation of a redundancy check circuit into a remainder partition comprising multiple levels of remainder XOR subtrees and having remainder latches between said levels of remainder XOR subtrees; and  
(b) distributing a packet data slice XOR function of said redundancy check circuit into a data partition comprising multiple levels of data XOR subtrees and having data latches between said levels of data XOR subtrees. ”

A useful result is not achieved under the practical application requirement. The claimed invention as a whole must produce a “useful, concrete and tangible” result to have a practical application.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 26-30 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 7,103,832. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

The subject matter claimed in the instant application (10/709,794) is fully disclosed in the cited U.S. Patent No. 7,103,832, for example:

Independent claims 1, 11, 21 and 26 of the present application (No. 10/709,794) and claims 1, 9 and 17 of U.S. Patent No. 7,103,832 are functionally equivalent.

As per claims 1, 9 and 17 (7,103,832) and claims 1, 11, 21 and 26 (10/709,794), U. S. Patent serial No. 7,103,832 claims "A cyclic redundancy check circuit, comprising: a W-bit packet data slice latch having outputs; a multiple level XOR subtree...; a remainder XOR subtree having inputs and outputs; a combinational XOR subtree...; a combinational XOR tree...; and an M-bit current CRC result latch...." and application with serial No. 10/709,794 claims "A circuit, comprising: multiple W-bit packet data slice latches each having inputs and outputs...; a data partition comprising multiple data XOR subtree levels...; a remainder partition comprising multiple remainder XOR subtree levels and having remainder latches between said remainder XOR subtree levels...; a combinational XOR tree...; and an M-bit current cyclic redundancy check (CRC) remainder latch having inputs and outputs...". It is obvious that both applications claim essentially the same limitations: a W-bit packet data slice latch; a remainder XOR subtree; a combinational XOR tree; and an M-bit current CRC).

### ***Response to Arguments***

6. Applicant's arguments filed on 4/23/2007 have been fully considered but they are not persuasive.

Applicant asserts that "the Examiner has picked a small number of elements from Applicants claims and the reference claims to compare and base his case of nonstatutory obviousness-type double patenting on and that even that comparison is flawed as explained infra.

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Further, the Examiner has failed to address the connections between elements in Applicants claims and the reference claims”.

The examiner respectfully disagrees with applicants’ statement because the Examiner has picked all similar limitations from Applicants’ claims to compare and base the case of nonstatutory obviousness-type double patenting. In addition, the examiner addressed clearly in the last Office Action the connections between elements in Applicants claims and the reference claims.

The Applicants’ remark regarding the double patenting rejection is not persuasive. Therefore, the Double Patenting rejection is maintained.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks, Washington, D.C. 20231

**or faxed to:** (703) 872-9306 for all formal communications.

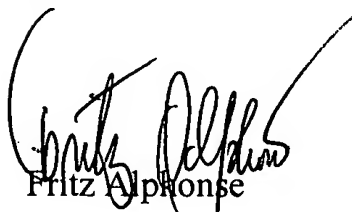
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Fourth Floor (Receptionist).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fritz Alphonse, whose telephone number is (571) 272-3813. The examiner can normally be reached on M-F, 8:30-6:00, Alt. Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert De Cady, can be reached at (571) 272-3819.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-3824.


Information regarding the status of an application may also be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Fritz Alphonse

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July 6, 2007



GUY LAMARRE  
PRIMARY EXAMINER